

REFERENCE TITLE: adult protective services; investigations; hearings

State of Arizona
House of Representatives
Forty-seventh Legislature
Second Regular Session
2006

HB 2558

Introduced by
Representatives Anderson, Barnes, Chase, Pearce: Burges, Burns J, Rosati

AN ACT

AMENDING SECTION 41-1092.02, ARIZONA REVISED STATUTES; AMENDING TITLE 46, CHAPTER 4, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 46-458; RELATING TO ADULT PROTECTIVE SERVICES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 41-1092.02, Arizona Revised Statutes, is amended to
3 read:

4 41-1092.02. Appealable agency actions: application of
5 procedural rules: exemption from article

6 A. This article applies to all contested cases as defined in section
7 41-1001 and all appealable agency actions, except contested cases with or
8 appealable agency actions of:

- 9 1. The state department of corrections.
- 10 2. The board of executive clemency.
- 11 3. The industrial commission of Arizona.
- 12 4. The Arizona corporation commission.
- 13 5. The Arizona board of regents and institutions under its
14 jurisdiction.

- 15 6. The state personnel board.
- 16 7. The department of juvenile corrections.
- 17 8. The department of transportation.
- 18 9. The department of economic security, except as provided in sections
19 8-506.01, ~~and~~ 8-811 AND 46-458.

20 10. The department of revenue regarding income tax, withholding tax or
21 estate tax or any tax issue related to information associated with the
22 reporting of income tax, withholding tax or estate tax.

- 23 11. The board of tax appeals.
- 24 12. The state board of equalization.

25 13. The state board of education, but only in connection with contested
26 cases and appealable agency actions related to applications for issuance or
27 renewal of a certificate and discipline of certificate holders pursuant to
28 sections 15-203, 15-534, 15-534.01, 15-535, 15-545 and 15-550.

- 29 14. The board of fingerprinting.

30 B. Unless waived by all parties, an administrative law judge shall
31 conduct all hearings under this article, and the procedural rules set forth
32 in this article and rules made by the director apply.

33 C. Except as provided in subsection A of this section:

34 1. A contested case heard by the office of administrative hearings
35 regarding taxes administered under title 42 shall be subject to the
36 provisions under section 42-1251.

37 2. A final decision of the office of administrative hearings regarding
38 taxes administered under title 42 may be appealed by either party to the
39 director of the department of revenue, or a taxpayer may file and appeal
40 directly to the board of tax appeals pursuant to section 42-1253.

41 D. Except as provided in subsections A, B, E, F and G of this section
42 and notwithstanding any other administrative proceeding or judicial review
43 process established in statute or administrative rule, this article applies
44 to all appealable agency actions and to all contested cases.

1 E. Except for a contested case or an appealable agency action
2 regarding unclaimed property, sections 41-1092.03, 41-1092.08 and 41-1092.09
3 do not apply to the department of revenue.

4 F. The board of appeals established by section 37-213 is exempt from:

5 1. The time frames for hearings and decisions provided in section
6 41-1092.05, subsection A, section 41-1092.08 and section 41-1092.09.

7 2. The requirement in section 41-1092.06, subsection A to hold an
8 informal settlement conference at the appellant's request if the sole subject
9 of an appeal pursuant to section 37-215 is the estimate of value reported in
10 an appraisal of lands or improvements.

11 G. Auction protest procedures pursuant to title 37, chapter 2, article
12 4.1 are exempt from this article.

13 Sec. 2. Title 46, chapter 4, article 1, Arizona Revised Statutes, is
14 amended by adding section 46-458, to read:

15 46-458. Hearing process; definitions

16 A. THE DEPARTMENT SHALL NOTIFY A PERSON WHO IS ALLEGED TO HAVE ABUSED
17 OR NEGLECTED A VULNERABLE ADULT THAT THE DEPARTMENT INTENDS TO SUBSTANTIATE
18 THE ALLEGATION AND OF THAT PERSON'S RIGHT:

19 1. TO RECEIVE A COPY OF THE REPORT CONTAINING THE ALLEGATION.

20 2. TO A HEARING.

21 B. THE DEPARTMENT SHALL SEND THE NOTICE PRESCRIBED IN SUBSECTION A OF
22 THIS SECTION BY FIRST CLASS MAIL NO MORE THAN FOURTEEN DAYS AFTER COMPLETION
23 OF THE INVESTIGATION.

24 C. A REQUEST FOR A HEARING ON THE PROPOSED FINDING MUST BE RECEIVED BY
25 THE DEPARTMENT WITHIN FOURTEEN DAYS AFTER RECEIPT OF THE NOTICE.

26 D. IF A REQUEST FOR A HEARING IS MADE PURSUANT TO SUBSECTION C OF THIS
27 SECTION, THE DEPARTMENT SHALL CONDUCT A REVIEW BEFORE THE HEARING. THE
28 DEPARTMENT SHALL PROVIDE AN OPPORTUNITY FOR THE ACCUSED PERSON TO PROVIDE
29 WRITTEN OR VERBAL INFORMATION TO SUPPORT THE POSITION THAT THE DEPARTMENT
30 SHOULD NOT SUBSTANTIATE THE ALLEGATION. IF THE DEPARTMENT DETERMINES THAT
31 THERE IS NO PROBABLE CAUSE THAT THE ACCUSED PERSON ENGAGED IN THE ALLEGED
32 CONDUCT, THE DEPARTMENT SHALL AMEND THE INFORMATION OR FINDING IN THE REPORT
33 AND SHALL NOTIFY THE PERSON, AND A HEARING SHALL NOT BE HELD.

34 E. NOTWITHSTANDING SECTION 41-1092.03, THE NOTIFICATION PRESCRIBED IN
35 SUBSECTION A OF THIS SECTION SHALL ALSO STATE THAT IF THE DEPARTMENT DOES NOT
36 AMEND THE INFORMATION OR FINDING IN THE REPORT AS PRESCRIBED IN SUBSECTION D
37 OF THIS SECTION WITHIN SIXTY DAYS AFTER IT RECEIVES THE REQUEST FOR A HEARING
38 THE PERSON HAS A RIGHT TO A HEARING UNLESS:

39 1. THE PERSON IS A PARTY IN A CIVIL, CRIMINAL OR ADMINISTRATIVE
40 PROCEEDING IN WHICH THE ALLEGATIONS OF ABUSE OR NEGLECT ARE AT ISSUE.

41 2. A COURT OR ADMINISTRATIVE LAW JUDGE HAS MADE FINDINGS AS TO THE
42 ALLEGED ABUSE OR NEGLECT.

43 F. IF THE DEPARTMENT DOES NOT AMEND THE INFORMATION OR FINDING IN THE
44 REPORT AS PRESCRIBED IN SUBSECTION D OF THIS SECTION, THE DEPARTMENT SHALL
45 NOTIFY THE OFFICE OF ADMINISTRATIVE HEARINGS OF THE REQUEST FOR A HEARING NO

1 LATER THAN FIVE DAYS AFTER COMPLETION OF THE REVIEW. THE DEPARTMENT SHALL
2 FORWARD ALL RECORDS, REPORTS AND OTHER RELEVANT INFORMATION WITH THE REQUEST
3 FOR HEARING WITHIN TEN DAYS. THE DEPARTMENT SHALL REDACT THE IDENTITY OF THE
4 REPORTING SOURCE BEFORE TRANSMITTING THE INFORMATION TO THE OFFICE OF
5 ADMINISTRATIVE HEARINGS.

6 G. THE OFFICE OF ADMINISTRATIVE HEARINGS SHALL HOLD A HEARING PURSUANT
7 TO TITLE 41, CHAPTER 6, ARTICLE 10, WITH THE FOLLOWING EXCEPTIONS:

8 1. A VULNERABLE ADULT WHO IS THE VICTIM OF OR A WITNESS TO ABUSE OR
9 NEGLECT IS NOT REQUIRED TO TESTIFY AT THE HEARING.

10 2. A VULNERABLE ADULT'S HEARSAY STATEMENT IS ADMISSIBLE IF THE TIME,
11 CONTENT AND CIRCUMSTANCES OF THAT STATEMENT ARE SUFFICIENTLY INDICATIVE OF
12 ITS RELIABILITY.

13 3. THE IDENTITY OF THE REPORTING SOURCE OF THE ABUSE OR NEGLECT SHALL
14 NOT BE DISCLOSED WITHOUT THE PERMISSION OF THE REPORTING SOURCE.

15 4. THE REPORTING SOURCE IS NOT REQUIRED TO TESTIFY.

16 5. A WRITTEN STATEMENT FROM THE REPORTING SOURCE MAY BE ADMITTED IF
17 THE TIME, CONTENT AND CIRCUMSTANCES OF THAT STATEMENT ARE SUFFICIENTLY
18 INDICATIVE OF ITS RELIABILITY.

19 H. ON COMPLETION OF THE PRESENTATION OF EVIDENCE, THE ADMINISTRATIVE
20 LAW JUDGE SHALL DETERMINE IF PROBABLE CAUSE EXISTS TO SUSTAIN THE
21 DEPARTMENT'S FINDING THAT THE ACCUSED ENGAGED IN THE ALLEGED CONDUCT. IF THE
22 ADMINISTRATIVE LAW JUDGE DETERMINES THAT PROBABLE CAUSE DOES NOT EXIST TO
23 SUSTAIN THE DEPARTMENT'S FINDING, THE ADMINISTRATIVE LAW JUDGE SHALL ORDER
24 THE DEPARTMENT TO AMEND THE INFORMATION OR FINDING IN THE REPORT.

25 I. THE DEPARTMENT SHALL PROVIDE THE PERSON WHO IS THE SUBJECT OF THE
26 INVESTIGATION AND THE PERSON WHO REPORTED THE SUSPECTED ABUSE OR NEGLECT WITH
27 A COPY OF THE OUTCOME OF THE INVESTIGATION AT ONE OF THE FOLLOWING TIMES:

28 1. IF THE REPORT IS UNSUBSTANTIATED.

29 2. IF PROBABLE CAUSE EXISTS THAT ABUSE OR NEGLECT HAS OCCURRED BUT A
30 SPECIFIC PERSON IS NOT IDENTIFIED AS HAVING ABUSED OR NEGLECTED THE
31 VULNERABLE ADULT.

32 3. AFTER THE TIME TO REQUEST A HEARING HAS LAPSED PURSUANT TO
33 SUBSECTION C OF THIS SECTION WITHOUT THE DEPARTMENT RECEIVING A REQUEST FOR A
34 HEARING.

35 4. AFTER A FINAL ADMINISTRATIVE DECISION HAS BEEN MADE PURSUANT TO
36 SECTION 41-1092.08.

37 J. FOR THE PURPOSES OF THIS SECTION:

38 1. "AMEND THE FINDING" MEANS TO CHANGE THE FINDING FROM SUBSTANTIATED
39 TO UNSUBSTANTIATED.

40 2. "AMEND THE INFORMATION" MEANS TO CHANGE INFORMATION IDENTIFYING THE
41 ACCUSED OF HAVING ABUSED OR NEGLECTED A VULNERABLE ADULT.